

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1688

Introduced by Assembly Member Goldberg

February 21, 2003

An act to add Part 8.5 (commencing with Section 2050) to Division 2 of the Labor Code, relating to car washes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1688, as amended, Goldberg. Car washes.

Existing law regulates various aspects of workplace and employee safety and health.

This bill would regulate the industry of car washing and polishing by providing specific recordkeeping requirements that employers of car washers must implement with regard to car washer wages, hours, and working conditions. The bill would require employers of car washers to register with the Labor Commissioner, pay a specified registration fee, and obtain a specified surety bond. Failure to register pursuant to these provisions would be a misdemeanor, punishable by specified penalties. These penalties and registration fees would be deposited in the Car Wash Worker Fund, which this bill would create, for disbursement by the commissioner, upon appropriation by the Legislature.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) California is home to hundreds of full-time car washes that
4 employ tens of thousands of car wash workers.
- 5 (b) The work performed by car wash employees is laborious,
6 fast-paced, and often hazardous.
- 7 (c) Car wash employees work long hours and may service
8 hundreds of vehicles on any given workday.
- 9 (d) According to various legal advocates, the car wash industry
10 is plagued with labor law violations, including minimum wage,
11 overtime, and rest and meal period violations.
- 12 (e) Many car wash employees, commonly known as
13 “propineros,” are not paid a wage by their employers and receive
14 only the tips given by customers.
- 15 (f) Many other car wash employees are paid below the
16 minimum wage and not paid at an overtime rate for overtime hours
17 worked.
- 18 (g) A significant number of car wash employees have been
19 harassed, intimidated, and mistreated by their employers because
20 of their immigration status.
- 21 (h) As a result of low wages and widespread labor law
22 violations, many car wash employees are forced to work in
23 substandard working conditions and live in poverty.
- 24 (i) Existing labor laws and enforcement efforts have failed to
25 remedy these problems.
- 26 (j) Therefore, it is the intent of the Legislature, in enacting this
27 act, to establish a system of registration, bonding requirements,
28 and prompt and effective criminal and civil sanctions for the
29 violation of the provisions set forth in this act or any provision of
30 law applicable to the employment of workers in the car washing
31 and polishing industry.



SEC. 2. Part 8.5 (commencing with Section 2050) is added to Division 2 of the Labor Code, to read:

PART 8.5. CAR WASHES

CHAPTER 1. GENERAL PROVISIONS

2050. The enactment of this part is an exercise of the police power of the State of California for the protection for the public welfare, prosperity, health, safety, and peace of its people. The civil penalties provided by this chapter are in addition to any other penalty provided by law.

2051. As used in this part:

(a) “Car washing and polishing” means washing, cleaning, drying, polishing, detailing, servicing, or otherwise providing cosmetic care to vehicles. “Car washing and polishing” does not include motor vehicle repair, as defined in Section 9880.1 of the Business and Professions Code.

(b) “Employer” means any individual, partnership, corporation, limited liability company, joint venture, or association engaged in the business of car washing and polishing that engages any other individual in providing those services. “Employer” does not include any charitable, youth, service, veteran, or sports group, club, or association that conducts car washing and polishing on an intermittent basis to raise funds for charitable, education, or religious purposes. *“Employer” does not include any licensed vehicle dealer or automotive repair business that conducts car washing and polishing ancillary to its primary business of selling, leasing, or servicing vehicles.*

(c) “Employee” means any person, including an alien or minor, who renders actual services in any business for an employer, whether for tips or for wages, and whether wages are calculated by time, piece, task, commission, or other method of calculation, and whether the services are rendered on a commission, concessionaire, or other basis.

(d) “Commissioner” means the Labor Commissioner.

2052. Every employer shall keep accurate records for three years, showing all of the following:

(a) The names and addresses of all employees engaged in rendering actual services for any business of the employer.

1 (b) The hours worked daily by each employee, including the
2 times the employee begins and ends each work period.

3 (c) All gratuities received daily by the employer, whether
4 received directly from the employee or indirectly by deduction
5 from the wages of the employee or otherwise.

6 (d) The wage and wage rate paid each payroll period.

7 (e) The age of all minor employees.

8 (f) Any other conditions of employment.

9 2053. The Division of Labor Standards and Enforcement
10 shall enforce this chapter. The commissioner shall adopt all
11 regulations and rules necessary to carry out the provisions of this
12 chapter.

13
14 CHAPTER 2. REGISTRATION

15
16 2054. Every employer shall register with the commissioner
17 annually.

18 2055. The commissioner may not permit any employer to
19 register, nor may the commissioner permit any employer to renew
20 registration until all of the following conditions are satisfied:

21 (a) The employer has applied for registration to the
22 commissioner by presenting proof of compliance with the local
23 government's business licensing or regional regulatory
24 requirements.

25 (b) The employer has obtained a surety bond issued by a surety
26 company admitted to do business in this state. The principal sum
27 of the bond shall be not less than ten thousand dollars (\$10,000).
28 The employer shall file a copy of the bond with the commissioner.

29 (1) The bond required by this section shall be in favor of, and
30 payable to the people of the State of California and shall be for the
31 benefit of any employee damaged by his or her employer's failure
32 to pay wages, interest on wages, or fringe benefits, or damaged by
33 violation of Section 351 or 353.

34 (2) Thirty days prior to the cancellation or termination of any
35 surety bond required by this section, the surety shall send written
36 notice to both the employer and the commissioner, identifying the
37 bond and the date of the cancellation or termination.

38 (3) An employer may not conduct any business until the
39 employer obtains a new surety bond and files a copy of it with the
40 commissioner.

1 (c) The employer has documented that a current workers'
2 compensation insurance policy is in effect for the employees.

3 (d) The employer has paid a registration fee to the
4 commissioner in the amount of one hundred fifty dollars (\$150)
5 plus an additional seventy-five dollars (\$75) for each branch
6 location maintained in this state by the employer.

7 2056. When a certificate of registration is originally issued or
8 renewed under this chapter, the commissioner shall provide
9 related and supplemental information to the registrant regarding
10 business administration and applicable labor laws.

11 2057. Proof of registration shall be by an official Division of
12 Labor Standards Enforcement registration form. Each employer
13 shall post the registration form where it may be read by the
14 employees during the workday.

15 2058. At least 30 days prior to the expiration of each
16 registrant's registration, the commissioner shall mail a renewal
17 notice to the last known address of the registrant. However,
18 omission of the commissioner to provide the renewal notice in
19 accordance with this subdivision may not excuse a registrant from
20 making timely application for renewal of registration, may not be
21 a defense in any action or proceeding involving failure to renew
22 registration, and may not subject the commissioner to any legal
23 liability.

24 2059. The commissioner shall require that, as a condition of
25 continued registration, the following employers shall maintain a
26 bond issued by a surety company admitted to business in this state:

27 (a) A twenty thousand dollar (\$20,000) wage bond is required
28 if an employer has violated any federal or state labor law
29 governing the minimum wage and overtime, child labor,
30 occupational safety and health, or worker's compensation or has
31 been subject to a final judgment for failure to pay wages due his
32 or her car wash employees.

33 (b) A twenty-five thousand dollar (\$25,000) wage bond is
34 required if an employer has committed multiple violations of
35 federal or state labor laws governing the minimum wage and
36 overtime, child labor, occupational safety and health, or worker's
37 compensation or has been subject to more than one final judgment
38 for unpaid wages in a three-year period. "Multiple violations" as
39 used in this subdivision, means one or more violations occurring

1 during three consecutive years or three or more violations in a
2 three-year period.

3 (c) The bond required by this section shall be in favor of, and
4 payable to the people of the State of California, and shall be for the
5 benefit of any employee damaged by his or her employer's failure
6 to pay wages, interest on wages, or fringe benefits, or damaged by
7 violation of Section 351 or 353.

8 2060. No employer may conduct any business without
9 complying with the registration and bond requirements of this
10 chapter.

11 2061. The commissioner may not renew the registration of
12 any employer until all of the following conditions are satisfied:

13 (a) The employer has executed a written application, in a form
14 prescribed by the commissioner, subscribed, and sworn by the
15 employer containing the following:

16 (1) A statement by the employer of all facts concerning the
17 applicants' character, competency, and responsibility.

18 (2) If the applicant is a corporation, the corporate name, the
19 names, residential addresses, and telephone numbers of all the
20 officers of the corporation, the names of all persons exercising
21 management responsibility in the applicant's office, and the names
22 and addresses of all persons having a financial interest of 10
23 percent or more in the business, and the percentage of financial
24 interest owned by each of those persons.

25 (3) If the applicant employer is other than a corporation, the
26 names and addresses of all persons except bona fide employees on
27 regular salaries, who are financially interested, either as partners,
28 associates, or profit sharers, in the employer's car wash business
29 together with the amount of their respective interests.

30 (b) The commissioner, after investigation, is satisfied as to the
31 character, competency, and responsibility of the employer.

32 (c) The employer in an oral or written examination, or both,
33 demonstrated the degree of knowledge of the current laws and
34 administrative regulations concerning car washing and polishing
35 employers that the commissioner deems necessary for the safety
36 and protection of car wash employees and the public. This
37 examination shall include a demonstration of knowledge of the
38 current laws and regulations regarding wages, hours, and working
39 conditions and occupational safety and health.

1 (d) The commission shall charge a fee to employers taking the
2 examination required by subdivision (c), which shall be sufficient
3 in the aggregate to defray the costs incurred in administering the
4 examinations.

5 2062. The commissioner may not register or renew the
6 registration of an employer in any of the following circumstances:

7 (a) The employer has not fully satisfied any final judgment for
8 unpaid wages due to an employee or former employee of a
9 business for which the employer is required to register under this
10 chapter.

11 (b) The employer has failed to remit the proper amount of
12 contributions required by the Unemployment Insurance Code or
13 the Employment Development Department had made an
14 assessment for those unpaid contributions against the employer
15 that has become final and the employer has not fully paid the
16 amount of delinquency for those unpaid contributions.

17 (c) The employer has failed to remit the amount of Social
18 Security and Medicare tax contributions required by the Federal
19 Insurance Contributions Act (FICA) to the Internal Revenue
20 Service and the employer has not fully paid the amount or
21 delinquency for those unpaid contributions.

22 2063. An employer who fails to register pursuant to Section
23 2054 is guilty of a misdemeanor punishable by a fine of not more
24 than one hundred dollars (\$100) for each calendar day the
25 employer conducts car washing and polishing while unregistered.

26 2064. No local agency may issue a business license or permit
27 to an employer for a car washing and polishing business without
28 proof that the employer is registered pursuant to Section 2055.

29 2065. (a) The Car Wash Worker Fund is established in the
30 State Treasury. Seventy-five dollars (\$75) of each registrant's
31 annual registration fee, required pursuant to subdivision (d) of
32 Section 2055, shall be deposited in this fund. In addition, fines
33 collected pursuant to Section 2.4 shall be deposited into the fund.
34 Moneys from the fund shall be disbursed, upon appropriation by
35 the Legislature, by the commissioner only to persons determined
36 by the commissioner to have been damaged by the failure to pay
37 wages and penalties and other related damages by any car wash or
38 polishing employer, to ensure the payment of wages and penalties
39 and other related damages. Any disbursed funds subsequently
40 recovered by the commissioner shall be returned to the fund.

(b) The remainder of the registrant's annual registration fee not deposited into the fund pursuant to Section 2063 shall be applied to costs incurred by the commissioner in administering the provisions of this section.

CHAPTER 3. SUCCESSORSHIP

2066. A successor to any employer that is engaged in car washing and polishing that owed wages and penalties to the predecessor's former employee or employees is liable for those wages and penalties if the successor meets any of the following criteria:

(a) Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor employer.

(b) Shares in the ownership, management, control of the labor relations, or interrelations of business operations with the predecessor employer.

(c) Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the affected employees of the predecessor employer.

(d) Is an immediate family member of any owner, partner, officer, or director of the predecessor employer of any person who had a financial interest in the predecessor employer.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.